IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANIDGARH.

C.W.P. No. 2622 of 2005

Date of Decision: 14.09.2006

Balwinder Kaur

.... Petitioner

Versus

State of Punjab and others.

... Respondents

CORAM : Hon'ble Mr. Justice J.S.Khehar
Hon'ble Mr. Justice S.D. Anand

Present : Mr.R.S. Rangpuri, Advocate,
for the petitioner.

Mr. B.S. Chahal, AAG Punjab,
for the respondents.

J.S. Khehar, J. (Oral)

The issue in hand pertains to the appointment of the petitioner against the post of Anganwari worker. The petitioner claims preferential appointment as Anganwari worker on account the fact, that the petitioner was a widow as well as riot affected. Insofar as the issue in hand is concerned, reference will have to be made to the instructions for the appointment of Anganwari Workers and Helpers, copy whereof is placed on record of this case as Annexure P-3. The aforesaid Instructions stipulate preferences in two paragraphs i.e. paragraph 4 as well as paragraph 6. The preferences depicted in the aforesaid two paragraphs are being extracted hereunder:

> "4. Marital Status: - In case of equal academic merit, the daughter-in-law of the village would be given preference than the unmarried daughter of the village."
>
> "6. Other preferences (Priority) – Widow, handicapped (Minimus disability 40% and above, but capable to perform the duty of Anganwari worker) riots victim, deserted woman and living separate from her husband from the last 5 years, will be given preference, in case she fulfils basic educational qualifications. The daughter-in-law of the village would be given preference than the unmarried daughter of village in case the preferences are equal."

Paragraph 6 contained in the aforesaid policy instructions came to be clarified subsequently through a communication dated 2.11.2004. A relevant part of the clarificatory letter is also being extracted hereunder:-

> "In reference to your side letter, it is informed to you that as per present instructions of Sr. No.6 regarding recruitment of Anganwari workers priority to candidates widow, handicapped, riot effected etc. shall be given in case if that candidate is one out of candidates of higher merit. So, it be kept in view at the time of selection of Anganwari workers."

It is apparent that in a process of selection, the most meritorious candidate must be favoured with appointment. There can, however, be deviation if an applicant is entitled to preferences are to be given to a certain category of persons. Various categories of persons have been depicted in the instructions for the appointment of Anganwari workers, illustratively expressed herein above (through paragraph 4 and 6 of the instructions for

appointment of Anganwari workers).

Having examined the entire issue in the totality of the circumstances noticed herein above, we are satisfied that the claim of the petitioner does not merit acceptance. This view of ours emerges from the fact, that it is the admitted position before this Court that in the process of determination of the merit of the petitioner vis-a-vis the selected candidate, the petitioner was awarded lesser marks than the selected candidate. Despite acknowledgment of the aforesaid factual position, the learned counsel for the petitioner insists that he should be chosen over and above the candidate who had been awarded more marks than the petitioner. The aforesaid claim of the petitioner, is based on clause 6 of the Instructions dated 9.1.2004 (Annexure P/3). Unfortunately for the petitioner, the clarification of the paragraph 6 contained in the aforesaid Instructions, on which pointed out reliance has been placed by the learned counsel for the petitioner, has been interpreted to mean that preference would be granted to the categories delineated in paragraph 6, subject to the condition, that when two candidates are placed at the same position in the merit list and one of the candidates falls in one of the preferential categories, then the candidate in the preferential category will be chosen for appointment. Unfortunately for the petitioner, the petitioner's merit position is lower than the candidates selected. Thus viewed, it is not possible for us to accept the claim of the petitioner.

Finding himself in the aforesaid predicament, learned counsel for the petitioner resorted to an alternative contention, namely, that there are two available vacancies of Anganwari workers, and as such, the petitioner should be accommodated against one of the said vacancies. It is not possible for us to accept the instant contention of the learned counsel for the

petitioner as well, on account of the fact, that only one post of Anganwari worker was advertised when the petitioner had applied for the same, and in the process of selection to fill up the advertised post, a candidate superior in merit over the petitioner was chosen for appointment. It will be open to the petitioner to apply for appointment against the vacancies which may have now become available, as and when the respondents chose to fill up the same.

For the reasons recorded above, we find no merit in this petition and the same is accordingly dismissed.

(J.S. Khehar)
Judge

September 14, 2006
vkd

(S.D. Anand)
Judge